DRN-5262204

The complaint

Mr G's complaint concerns a loan made to a property company from his self-invested personal pension (SIPP), which was provided by Dentons Pension Management Limited (Dentons). He says Dentons should not have allowed the loan, as neither the accountant nor the company he made the loan to were authorised by the Financial Conduct Authority (FCA). He also says he was not advised of the risks associated with the loan, and that he had understood he would be investing in two companies, not one. And he says Dentons has charged him high fees, but it is not clear what it has done to earn those fees.

What happened

I have first set out brief details of the parties involved with the events subject to complaint.

Dentons

Dentons is a SIPP provider and administrator. At the time of the events in this complaint, Dentons was regulated by the FCA. Dentons was authorised, in relation to SIPPs, to arrange (bring about) deals in investments, to deal in investments as principal, to establish, operate or wind up a pension scheme, and to make arrangements with a view to transactions in investments. It provided Mr G's SIPP.

The property company, "G"

G was a company registered in England, incorporated in September 2006. Companies House records the nature of its business as "other accommodation". It was dissolved in 2018.

The accountant, Mr R

Mr R is an accountant and, at the time of the events that are the subject of the complaint, was the bookkeeper for Mr G's business. Mr G says Mr R recommended a loan to G to him, but did not describe it as a loan to G; it was described as an investment in two different companies. At the time of the loan the registered office of G was Mr R's address.

Mr G's dealings with the parties

The timeline of the main events is as follows:

- 16 April 2013 – Mr G applies for a SIPP with Dentons. No financial advisor is named on the application form.
- 16 April 2013 – Mr G completes Dentons' "SIPP loans to unconnected parties" form.
- 16 May 2013 - £84,143.72 paid from existing scheme into the SIPP.
- 20 May 2013 – Mr G is issued a share certificate (he says by Mr R), which says he is the registered holder of 17,500 shares in G.

- 4 June 2013 – a loan agreement is entered into, signed by Mr R, a "*duly authorised director*" of G, and Dentons.

- 11 June 2013 - £70,000 is paid from Mr G's SIPP to G.

- 24 April 2014 – Mr G is issued a share certificate, which says he is the registered holder of around 30.5m of shares in a property management company, "TH", of which Mr R was a director.

- 6 April 2017 - £1,000 is paid to Mr G's SIPP by G (no other payments have been made to Mr G's SIPP by G).

- 29 May 2018 – G is dissolved through a compulsory strike off.

The loan application and agreement

I have set out below some detail from these key documents.

Dentons' "*SIPP loans to unconnected parties*" form makes the following statements at the outset:

"*SIPPs are permitted to make loans to unconnected parties*."

"*Each loan will be subject to individual approval by Dentons*."

"*For secured loans above 50% of your net SIPP assets, we will require you to take independent financial advice*."

The form asks for Mr G's details, then the contact details of his advisor. The word "*accountant*" was written above that latter section, and Mr R's details were entered.

The form then asks for the details of the company the loan is to be provided to (G), and the type of business the company was engaged in (answered as "*property trading*").

The "*loan details*" section of the form follows. That recorded that the amount of the loan was to be £70,000, repayable in annual instalments, at 8% interest, and that the funds were required for "*property purchase*". The remainder of the form, which asked for details of security or a guarantor, was left blank.

The loan agreement confirmed the details set out in the application, and included the following section (described as "*Definition 5*"):

"***Security***

As a condition of granting the Advance the Lenders require the Borrower to agree to enter into a Legal Charge in due course but within the period of one year to provide security for the Advance against the property of the said Borrower specified therein."

Dentons' Due Diligence

We asked Dentons a number of questions about the due diligence it carried out before accepting Mr G's application for the SIPP and loan. The main points it made in response, in summary, were:

- There was no introducer involved with the application; it therefore did not carry out any introducer due diligence.

- It confirmed through a third party that G was a property trading company and that there was no connection between the member and the shareholders or directors of that company.

- The nature of the investment itself, a SIPP loan to an unconnected UK trading company, is simple enough to understand. In terms of the borrower, it established through the ~~third party~~third party report and Companies House that G was a bona fide, trading, UK incorporated company and its affairs were up to date.

- G had been operating since 2006. It has provided copies of the accounts from 2012 through to 2015, together with a list of shareholders, which confirms no relationship between the member and the company's shareholders or directors.

- The trustees of the SIPP executed a loan agreement with G to formally document the terms and conditions of the loan to be advanced by Mr G's SIPP. The nature of the investment, i.e. an unsecured loan is a permitted investment within HMRC rules.

- The risk of the investment was reflected by the anticipated rate of interest payable under the terms of the agreement signed by Mr G.

- The terms of the loan were quite specific and thus easily verifiable at any point in time.

- Based on the latest available accounts prior to making the advance G had a positive balance sheet. This was further strengthened over the next three years of trading as is demonstrated by the accounts. There was therefore no evidence to suggest that the investment would be impaired.

- It had no correspondence relating to the due diligence conducted on the investment.

Our investigator's view

Our investigator concluded Mr G's complaint should be upheld. He said, in summary:

- When considering what good industry practice would look like he was not persuaded the due diligence carried out by Dentons was sufficient.

- This was an unsecured loan and shares into a company which at the time had only been active a handful of years. The loan was set at an amount which equated to roughly one-third of the company's total assets with no evidence sought to confirm that it could provide the promised returns.

- The loan term, for such a small company, was set for a long period. There was nothing to guarantee that G would remain in existence to repay the loan. Also, good industry practice would be to limit a SIPP's investment into unsecured loans based on their high-risk nature.

- Based on the terms of the loan agreement, there was no exit strategy for Mr G should he need to release the funds for retirement or in the event of his passing or serious ill health.

- Although he appreciated that to Dentons this was a unique request with no management information to form a pattern it should in his view have concluded the loan as anomalous, or unusual at least, and refused the request.

- Dentons also failed to consider parts of COBS 10 which are relevant. This required an appropriateness test.

- Mr G had no particular experience or knowledge of such investments, or therefore any particular understanding of the risks. On that basis, Dentons should have warned Mr G that the investment was inappropriate, and, on balance, he believed that warning would have dissuaded him from investing.

Dentons' response to the investigator's view

Dentons did not accept the investigator's view. It said, in summary:

- The contract between Mr G and Dentons affects the regulatory obligations that applied to Dentons in relation to Mr G and his SIPP. Furthermore, the regulatory obligations do not take precedence over the contractual terms agreed between Mr G and Dentons.

- Dentons undertook due diligence, which extended beyond checking compliance with HMRC rules, and behaved appropriately in the best interests of Mr G in that respect.

- Since the Dentons SIPP was an execution-only arrangement, the contract between Mr G and Dentons made it clear that there was no duty on Dentons to consider the suitability or appropriateness of the SIPP or the proposed investment (the loan to G).

- The due diligence described by the investigator was not required in relation to an execution-only arrangement, such as Mr G's SIPP; and Dentons did comply with the regulatory obligations, to the extent they were relevant to an execution-only scenario.

- In addition, whilst the SIPP was established with no advice provided, Mr G has stated that he was provided advice by Mr R. COBS 2.4.8 states "*it will generally be reasonable…. for a firm to rely on information provided to it in writing by an unconnected, authorised person, or a Professional Firm, unless it is aware or reasonably aware of any fact which would give reasonable grounds to question the accuracy of this information*".

- Its Terms and Conditions of Business (point 3) states: "*DPM will not normally provide you with advice concerning the suitability or otherwise of the Plan in relation to your own circumstances. Also, ordinarily, advice will not be provided in relation to whether an intended Plan Investment is appropriate or suitable for your own circumstances excepting that DPM will inform you should any such Investment be considered not to be in accordance with HMRC regulations and requirements. In the event you consider that such advice is required, you should seek this from a competent and authorised intermediary prior to entering into any commitment to establish the Plan or to implement a particular investment*."

- Its Terms and Conditions of Business (point 5) states: "*DPM will not act as Investment Manager for the assets held within the Plan. The responsibility for acting as such rests with you or any nominated (and authorised) representative you might wish to appoint. In its capacity as the Administrator of the Plan, DPM will account to*

you and / or any nominated Investment Manager for any transaction notified to the firm".

- Essentially, it was not Dentons' responsibility to determine the terms of the investment, only to ensure that the investment was acceptable.

- Dentons is not a MiFID firm – the restrictions referenced by the investigator in respect of appropriateness do not therefore apply.

As an agreement could not be reached, the complaint has been referred to me for consideration.

Further information provided by Dentons

I recently asked Dentons some questions. I have set out the key questions I asked (in bold), and the answers received from Dentons, below.

In its 4 June 2013 letter to accountant, Mr R, Dentons says "*We look forward to receiving the security document within a year, as stated in Definition 5*"….. What led to this clause being inserted in these terms?

"*When the loan was initially made the property, against which the security was to be applied, had not yet been constructed. Essentially, the loan was initially made on an unsecured basis, with a request that security, by way of a legal charge against the property, be added within 1 year (post-construction). The terms were agreed by* [Mr G] *and* [G] *in a legally binding agreement*."

Did Dentons have an understanding of why security by way of a legal charge was not being put in place at the outset?

"*Please see above*"

On what basis did Dentons understand security would be provided within a year? Did Dentons satisfy itself that property was, or would be, available which a legal charge could be made against?

"*Dentons ensured a legally binding agreement was in place, agreed by all parties, which required the implementation of said legal charge. This format / development / investment was not unusual at that time, i.e. a loan being required to fund a property development. Upon completion a charge is put in place against the newly constructed property (at Land Registry) to provide the pension trustees with additional security for the remainder of the loan period.*

While security was not put in place at outset (against another asset), it is important to note that unsecured loans were acceptable under HMRC rules at that time. They still are in 2024."

Was the legal charge ever made? If not, did Dentons take any steps to alert Mr G once the time for providing the security had lapsed?

"*No, the legal charge was not put in place. Steps were taken by Dentons to apply the charge as originally agreed but it never came to be*".

Did Dentons take any steps to require Mr G to take legal advice on the arrangements he was entering into?

"*It is not the position of the SIPP provider to recommend legal advice in relation to* [Mr G]*'s chosen investments, nor was it a regulatory requirement*."

Did Dentons provide Mr G with any warnings of the risk associated with the arrangements he was entering into?

"[Mr G] *completed our SIPP loans to unconnected parties questionnaire. The purpose of the questionnaire is two-fold;*

1. So Dentons can determine the terms of the proposed investment and whether or not it is permissible

2. *To confirm to* [Mr G] *(or any other client completing such a form) the risks associated with lending money to an unconnected party.*

Among other items noted in the declaration, [Mr G] *signed to confirm the following:*

- *I have provided all relevant information and it is true and correct to the best of my knowledge*
- *I understand the risks of lending from my SIPP, particularly if I have selected to lend on an unsecured basis*
- *I understand that Dentons cannot comment on the appropriateness of the loan as an investment in my SIPP*

[Mr G] *was making the loan investment of his own volition. He had capacity and he signed to confirm that he knew the risks, especially having consulted with his long-standing accountant*, [Mr R], *who was fundamental to the terms of the loan being agreed, a constant presence throughout the duration of the loan and who remains involved to the present day*."

The "*SIPP loans to unconnected parties questionnaire*" referred to here is the "*SIPP loans to unconnected parties*" form I mention above.

What was Dentons understanding of what was going to be done with the money the SIPP was lending to the business?

"*Please see above. The loan was intended to fund a development project*."

Did Dentons take any steps to check if the company was in a position to be likely to repay the loan/pay the interest due?

"*A due diligence report was carried out which confirmed that the borrower was bona fide, in accordance with the requirements at that time*."

What was Dentons understanding of how Mr G had developed an intention to make a loan to the company using his SIPP?

"[Mr G] *established his SIPP with the intention of using his SIPP funds to invest in a commercial property development project, as recommended by his accountant* [Mr R], *by way of a SIPP loan. Such investments were permitted by Dentons, as well as numerous other SIPP providers, at that time*."

Dentons also confirmed no fees were now being taken by it from Mr G's SIPP, and it remained in correspondence with Mr R about repayment of the loan.

My provisional decision

I recently issued a provisional decision. My provisional conclusion was the complaint should be upheld. My key provisional findings, in summary, were that Dentons should reasonably have identified the loan and SIPP application as carrying a risk of consumer detriment and, when dealing with the business, had not acted in a way which was consistent with its regulatory obligations. In relation to the ~~latter~~latter, I noted the paperwork appeared to be incomplete and that Dentons did not appear to have adhered to its own policies when dealing with this business.

Responses to my provisional decision

Dentons did not accept my decision. It said, in summary:

- I have not addressed why Mr G thought that he should take advice from Mr R regarding his choice of investments. I should ask Mr G to provide reasons for taking the advice of his accountant. It surmises that it is because he trusted Mr R having known him for many years.

- Mr G signed its Terms of Business on 24 April 2013. In line with its regulatory obligations, it drew Mr G's attention to the risks involved with transferring his pension to a SIPP.

- Section 5(2)(d) of FSMA (now section 1C) requires the FCA in securing an appropriate degree of protection for consumers, to have regard to amongst other things, the general principle that consumers should take responsibility for their own investment decisions.

- It is not fair or reasonable that it should bear the loss for Mr G's investment decisions and his dealings with his long serving accountant, upon whom he relied, prior to any involvement with it.

- Mr R's business model consisted of acting as a prudent member of the accountancy profession and it is satisfied then and now that Mr G trusted Mr R to act in his best interests with his financial dealings.

- It is more likely than that that the loan would have been made elsewhere if Dentons had refused to accept the investment, because of the long standing and trusted relationship that Mr G had with Mr R. I have provided no evidence or substantive arguments against this point, just a supposition based on what is fair and reasonable.

- Mr G says that he did not want to take significant risks and did not understand what he was doing. Its Terms and Conditions of Business were signed eight days after Mr G completed and signed the SIPP Application Form. This shows Mr G knew that he should consider his decisions before proceeding. This indicates the actions of someone who actually understands what they are doing because they have taken time to reflect before agreeing to opening their Dentons' SIPP.

- It wrote to Mr G, reminding him of the terms of security offered for the loan. The security by way of legal charge had also been discussed with him. Mr G cannot now claim that he did not understand what was happening regarding his investment and it is more likely than not, that the conversation between Mr G and its consultant included a number of the issues now raised.

- The risk of detriment posed to Mr G relates to his failure to take appropriate financial advice and complete reliance on his trusted chartered accountant who had advised him for many years.

- It was not then, nor is it now, a regulatory requirement for any SIPP operator to require a client to seek advice from a regulated financial adviser or any other adviser in any other professional capacity, regarding their personal choice of investments.

- There are clear declarations provided by any SIPP operator to new clients for a reason and it is entirely reasonable that the SIPP operator should be entitled to rely on such declarations.

- It is obvious that there are other parties involved in this transaction, and they must bear an apportionment of responsibility.

Mr G accepted my provisional decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having carefully reconsidered everything, I remain of the view set out in my provisional decision. My final decision therefore largely reflects my provisional one. Dentons has not responded to many of my provisional findings. The focus of its response is primarily on the question of whether it is fair to require it to pay compensation, on the basis that Mr G himself or the other parties involved should bear responsibility, rather than the findings I set out in my provisional decision otherwise. And Mr G accepts my provisional decision. So, save for where I come to consider whether it is fair to ask Dentons to pay Mr G compensation, my findings below are largely as set out in my provisional decision.

As a preliminary point, the purpose of this decision is to set out my findings on what's fair and reasonable, and explain my reasons for reaching those findings, not to offer a point-by-point response to every submission made by the parties to the complaint. And so, whilst I've carefully considered all the submissions made by both parties, I've focussed here on the points I believe to be key to my determination of what's fair and reasonable in the circumstances.

In a similar vein, I confirm I have read – and carefully considered – everything the parties have said and submitted. But the summary I have set out above is not intended to be exhaustive; rather, it is intended to be a summary of what I consider to be key.

I'm required to determine this complaint by reference to what I consider to be fair and reasonable in all the circumstances of the case. When considering what is fair and reasonable, I am required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

With that in mind I will start by setting out what I have identified as the key relevant considerations to deciding what is fair and reasonable in this case.

Relevant considerations

The Principles

In my view, the FCA's Principles for Businesses are of particular relevance to my decision. The Principles for Businesses, which are set out in the FCA's handbook "*are a general statement of the fundamental obligations of firms under the regulatory system*" (PRIN 1.1.2G). I consider that the Principles relevant to this complaint include Principles 2, 3 and 6 which say:

"*Principle 2 – Skill, care and diligence – A firm must conduct its business with due skill, care and diligence.*

Principle 3 – Management and control – A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

Principle 6 – Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly."

I have carefully considered the relevant law and what this says about the application of the FCA's Principles. In *R (British Bankers Association) v Financial Services Authority* [2011] EWHC 999 (Admin) ("BBA") Ouseley J said at paragraph 162:

"*The Principles are best understood as the ever present substrata to which the specific rules are added. The Principles always have to be complied with. The Specific rules do not supplant them and cannot be used to contradict them. They are but specific applications of them to the particular requirement they cover. The general notion that the specific rules can exhaust the application of the Principles is inappropriate. It cannot be an error of law for the Principles to augment specific rules*."

And at paragraph 77 of BBA Ouseley J said:

"*Indeed, it is my view that it would be a breach of statutory duty for the Ombudsman to reach a view on a case without taking the Principles into account in deciding what would be fair and reasonable and what redress to afford. Even if no Principles had been produced by the FSA, the FOS would find it hard to fulfil its particular statutory duty without having regard to the sort of high level Principles which find expression in the Principles, whoever formulated them. They are of the essence of what is fair and reasonable, subject to the argument about their relationship to specific rules*."

In *R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service* [2018] EWHC 2878) ("BBSAL"), Berkeley Burke brought a judicial review claim challenging the decision of an Ombudsman who had upheld a consumer's complaint against it. The Ombudsman considered the ~~FCA~~ Principles and good industry practice at the relevant time. He concluded that it was fair and reasonable for Berkeley Burke to have undertaken due diligence in respect of the investment before allowing it into the SIPP wrapper, and that if it had done so, it would have refused to accept the investment. The Ombudsman found Berkeley Burke had therefore not complied with its regulatory obligations and had not treated its client fairly.

Jacobs J, having set out some paragraphs of BBA including paragraph 162 set out above, said (at paragraph 104 of BBSAL):

"*These passages explain the overarching nature of the Principles. As the FCA correctly submitted in their written argument, the role of the Principles is not merely to cater for new or unforeseen circumstances. The judgment in BBA shows that they are, and indeed were always intended to be, of general application. The aim of the Principles based regulation described by Ouseley J. was precisely not to attempt to formulate a code covering all possible circumstances, but instead to impose general duties such as those set out in*

Principles 2 and 6."

The BBSAL judgment also considers section 228 of the Financial Service and Markets Act 2000 (FSMA) and the approach an Ombudsman is to take when deciding a complaint. The judgment of Jacobs J in BBSAL upheld the lawfulness of the approach taken by the Ombudsman in that complaint, which I have described above, and included the Principles and good industry practice at the relevant time as relevant considerations that were required to be taken into account.

As outlined above, Ouseley J in the BBA case held that it would be a breach of statutory duty if I were to reach a view on a complaint without taking the Principles into account in deciding what is fair and reasonable in all the circumstances of a case. And, Jacobs J adopted a similar approach to the application of the Principles in BBSAL. I'm therefore satisfied that the Principles are a relevant consideration and I will consider them in the specific circumstances of this complaint.

The *Adams* court cases and COBS 2.1.1R

On 18 May 2020, the High Court handed down its judgment in the case of *Adams v ~~Dentons~~ Options SIPP* [2020] EWHC 1229 (Ch). Mr Adams subsequently appealed the decision of the High Court and, on 1 April 2021, the Court of Appeal handed down its judgment in *Adams v ~~Dentons~~ Options UK Personal Pensions LLP* [2021] EWCA Civ 474. I've taken account of both these judgments and the judgment in *Adams v ~~Dentons~~ Options UK Personal Pensions LLP* [2021] EWCA Civ 1188 when making this decision on Mr G's case. I note the Supreme Court refused ~~Dentons~~ Options permission to appeal the Court of Appeal judgment.

I've considered whether *Adams* means that the Principles should not be taken into account in deciding this case. I note that the Principles for Businesses didn't form part of Mr Adams' pleadings in his initial case against ~~Dentons~~ Options SIPP. And, HHJ Dight didn't consider the application of the Principles to SIPP operators in his judgment. The Court of Appeal also gave no consideration to the application of the Principles to SIPP operators. So, neither of the judgments say anything about how the Principles apply to an Ombudsman's consideration of a complaint. But, to be clear, I don't say this means *Adams* isn't a relevant consideration at all. As noted above, I've taken account of the *Adams* judgments when making this decision on Mr G's case.

I acknowledge that COBS 2.1.1R (A firm must act honestly, fairly and professionally in accordance with the best interests of its client) overlaps with certain of the Principles and that this rule was considered by HHJ Dight in the High Court case. Mr Adams pleaded that ~~Dentons~~ Options SIPP owed him a duty to comply with COBS 2.1.1R, a breach of which, he argued, was actionable pursuant to section 138(D) of FSMA ("the COBS claim"). HHJ Dight rejected this claim and found that ~~Dentons~~ Options SIPP had complied with the best interests rule on the facts of Mr Adams' case.

Although the Court of Appeal ultimately overturned HHJ Dight's judgment, it rejected that part of Mr Adams appeal that related to HHJ Dight's dismissal of the COBS claim on the basis that Mr Adams was seeking to advance a case that was radically different to that found in his initial pleadings. The Court found that this part of Mr Adams' appeal did not so much represent a challenge to the grounds on which HHJ Dight had dismissed the COBS claim, but rather was an attempt to put forward an entirely new case.

I note that HHJ Dight found that the factual context of a case would inform the extent of the duty imposed by COBS 2.1.1R. HHJ Dight said at para 148:

"*In my judgment in order to identify the extent of the duty imposed by Rule 2.1.1 one has to identify the relevant factual context, because it is apparent from the submissions of each of the parties that the context has an impact on the ascertainment of the extent of the duty. The key fact, perhaps composite fact, in the context is the agreement into which the parties entered, which defined their roles and functions in the transaction*."

I therefore need to construe the duties Dentons owed to Mr G under COBS 2.1.1R in light of the specific facts of Mr G's case. So, I've considered COBS 2.1.1R – alongside the remainder of the relevant considerations, and within the factual context of Mr G's case, including Dentons' role in the transactions.

However, I think it's important to emphasise that I must determine this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. And, in doing that, I'm required to take into account relevant considerations which include law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. This is a clear and relevant point of difference between this complaint and the judgments in *Adams v ~~Dentons~~Options SIPP*. That was a legal claim which was defined by the formal pleadings in Mr Adams' statement of case.

I also want to emphasise that I do not say that Dentons was under any obligation to assess Mr G's personal financial circumstances or to advise Mr G on the SIPP and/or the loan. Refusing to accept an application, having given the introducer and the application proper scrutiny and identifying concerning issues, isn't the same thing as advising Mr G on the merits of the SIPP and/or the loan.

Overall, I'm satisfied that COBS 2.1.1R is a relevant consideration – but that it needs to be considered alongside the remainder of the relevant considerations, and within the factual context of Mr G's case.

Court of Appeal case

I have also considered the Court of Appeal's judgment in *~~Dentons~~ Options UK Personal Pensions LLP v Financial Ombudsman Service Limited [2024] EWCA Civ 541*, which refers to the case law I mention above and approved the decision of the ombudsman in the case in question.

Regulatory publications

The FCA (and its predecessor, the FSA) has issued a number of publications which remind SIPP operators of their obligations and set out how they might achieve the outcomes envisaged by the Principles, namely:

- The 2009 and 2012 thematic review reports.
- The October 2013 finalised SIPP operator guidance.
- The July 2014 "Dear CEO" letter.

I've considered the relevance of these publications, some of which were published before Dentons' acceptance of Mr G's SIPP application and application to loan money to G. And I've set out what I consider to be material parts of the publications here.

The 2009 Thematic Review Report

The 2009 report included the following statement:

"*We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its customers and treat them fairly') insofar as they are obliged to ensure the fair treatment of their customers. COBS 3.2.3(2) states that a member of a pension scheme is a 'client' for COBS purposes, and 'Customer' in terms of Principle 6 includes clients.*

It is the responsibility of SIPP operators to continuously analyse the individual risks to themselves and their clients, with reference to the six TCF consumer outcomes …

We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs. Such instances could then be addressed in an appropriate way, for example by contacting the member to confirm the position, or by contacting the firm giving advice and asking for clarification. Moreover, while they are not responsible for the advice, there is a reputational risk to SIPP operators that facilitate SIPPs that are unsuitable or detrimental to clients.

Of particular concern were firms whose systems and controls were weak and inadequate to the extent that they had not identified obvious potential instances of poor advice and/or potential financial crime. Depending on the facts and circumstances of individual cases, we may take enforcement action against SIPP operators who do not safeguard their customers' interests in this respect, with reference to Principle 3 of the Principles for Businesses ('a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems').

The following are examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms:

- *Confirming, both initially and on an ongoing basis, that intermediaries that advise clients are authorised and regulated by the FSA, that they have the appropriate permissions to give the advice they are providing to the firm's clients, and that they do not appear on the FSA website listing warning notices.*

- *Having Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business.*

- *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.*

- *Being able to identify anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended.*

- *Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for*

advice, having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely.

- *Routinely identifying instances of execution-only clients who have signed disclaimers taking responsibility for their investment decisions, and gathering and analysing data regarding the aggregate volume of such business.*

- *Identifying instances of clients waiving their cancellation rights, and the reasons for this.*"

The later publications

In the October 2013 finalised SIPP operator guidance, the FCA states:

"*This guide, originally published in September 2009, has been updated to give firms further guidance to help meet the regulatory requirements. These are not new or amended requirements, but a reminder of regulatory responsibilities that became a requirement in April 2007.*

All firms, regardless of whether they do or do not provide advice must meet Principle 6 and treat customers fairly. COBS 3.2.3(2) is clear that a member of a pension scheme is a "client" for SIPP operators and so is a customer under Principle 6. It is a SIPP operator's responsibility to assess its business with reference to our six TCF consumer outcomes: …"

The October 2013 finalised SIPP operator guidance also set out the following:

"***Relationships between firms that advise and introduce prospective members and SIPP operators***

Examples of good practice we observed during our work with SIPP operators include the following:

- *Confirming, both initially and on an ongoing basis, that: introducers that advise clients are authorised and regulated by the FCA; that they have the appropriate permissions to give the advice they are providing; neither the firm, nor its approved persons are on the list of prohibited individuals or cancelled firms and have a clear disciplinary history; and that the firm does not appear on the FCA website listings for unauthorised business warnings.*

- *Having terms of business agreements that govern relationships and clarify the responsibilities of those introducers providing SIPP business to a firm.*

- *Understanding the nature of the introducers' work to establish the nature of the firm, what their business objectives are, the types of clients they deal with, the levels of business they conduct and expect to introduce, the types of investments they recommend and whether they use other SIPP operators. Being satisfied that they are appropriate to deal with.*

- *Being able to identify irregular investments, often indicated by unusually small or large transactions; or higher risk investments such as unquoted shares which may be illiquid. This would enable the firm to seek appropriate clarification, for example from the prospective member or their adviser, if it has any concerns.*

- *Identifying instances when prospective members waive their cancellation*

rights and the reasons for this.

- *Although the members' advisers are responsible for the SIPP investment advice given, as a SIPP operator the firm has a responsibility for the quality of the SIPP business it administers.*

Examples of good practice we have identified include:

- *conducting independent verification checks on members to ensure the information they are being supplied with, or that they are providing the firm with, is authentic and meets the firm's procedures and are not being used to launder money*

- *having clear terms of business agreements in place which govern relationships and clarify responsibilities for relationships with other professional bodies such as solicitors and accountants, and*

- *using non-regulated introducer checklists which demonstrate the SIPP operators have considered the additional risks involved in accepting business from nonregulated introducers*"

In relation to due diligence the October 2013 finalised SIPP operator guidance said:

"***Due diligence***

Principle 2 of the FCA's Principles for Businesses requires all firms to conduct their business with due skill, care and diligence. All firms should ensure that they conduct and retain appropriate and sufficient due diligence (for example, checking and monitoring introducers as well as assessing that investments are appropriate for personal pension schemes) to help them justify their business decisions. In doing this SIPP operators should consider:

- *ensuring that all investments permitted by the scheme are permitted by HMRC, or where a tax charge is incurred, that charge is identifiable, HMRC is informed and the tax charge paid*

- *periodically reviewing the due diligence the firm undertakes in respect of the introducers that use their scheme and, where appropriate enhancing the processes that are in place in order to identify and mitigate any risks to the members and the scheme*

- *having checks which may include, but are not limited to:*

    - *ensuring that introducers have the appropriate permissions, qualifications and skills to introduce different types of business to the firm, and*

    - *undertaking additional checks such as viewing Companies House records, identifying connected parties and visiting introducers*

- *ensuring all third-party due diligence that the firm uses or relies on has been independently produced and verified*

- *good practices we have identified in firms include having a set of benchmarks, or minimum standards, with the purpose of setting the minimum standard the firm is prepared to accept to either deal with introducers or*

accept investments, and

- *ensuring these benchmarks clearly identify those instances that would lead a firm to decline the proposed business, or to undertake further investigations such as instances of potential pension liberation, investments that may breach HMRC tax relievable investments and non-standard investments that have not been approved by the firm*"

The July 2014 "Dear CEO" letter provides a further reminder that the Principles apply and an indication of the FCA's expectations about the kinds of practical steps a SIPP operator might reasonably take to achieve the outcomes envisaged by the Principles.

The "Dear CEO" letter also sets out how a SIPP operator might meet its obligations in relation to investment due diligence. It says those obligations could be met by:

- *Correctly establishing and understanding the nature of an investment*
- *Ensuring that an investment is genuine and not a scam, or linked to fraudulent activity, money-laundering or pensions liberation*
- *Ensuring that an investment is safe/secure (meaning that custody of assets is through a reputable arrangement, and any contractual agreements are correctly drawn-up and legally enforceable)*
- *Ensuring that an investment can be independently valued, both at point of purchase and subsequently*
- *Ensuring that an investment is not impaired (for example that previous investors have received income if expected, or that any investment providers are credit worthy etc)*

Although I've referred to selected parts of the publications, to illustrate their relevance, I have considered them in their entirety.

I acknowledge that the 2009 and 2012 reports and the "Dear CEO" letter are not formal "guidance" (whereas the 2013 finalised guidance is). However, the fact that the reports and "Dear CEO" letter did not constitute formal guidance does not mean their importance should be underestimated. They provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and producing the outcomes envisaged by the Principles. In that respect the publications, which set out the regulator's expectations of what SIPP operators should be doing, also go some way to indicate what I consider amounts to good industry practice and I am, therefore, satisfied it is appropriate to take them into account.

It is relevant that when deciding what amounted to good industry practice in the BBSAL case, the Ombudsman found that "*the regulator's reports, guidance and letter go a long way to clarify what should be regarded as good practice and what should not*." And the judge in BBSAL endorsed the lawfulness of the approach taken by the Ombudsman.

At its introduction the 2009 Thematic Review Report says:

"In this report, we describe the findings of this thematic review, and make clear what we expect of SIPP operator firms in the areas we reviewed. It also provides examples of good practices we found."

And, as referenced above, the report goes on to provide "…*examples of measures that SIPP*

operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms."

So, I'm satisfied that the 2009 Report is a *reminder* that the Principles apply and it gives an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. The Report set out the regulator's expectations of what SIPP operators should be doing and therefore indicates what I consider amounts to good industry practice at the relevant time. So, I'm satisfied it's relevant and therefore appropriate to take it into account.

The remainder of the publications also provide a *reminder* that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and to produce the outcomes envisaged by the Principles. In that respect, these publications also go some way to indicate what I consider amounts to good industry practice at the relevant time. I therefore remain satisfied it's appropriate to take them into account too.

The obligation to act in accordance with the Principles existed throughout the events in this case. It is also clear from the text of the 2009 and 2012 Thematic Review Reports (and the "Dear CEO" letter in 2014) that the regulator expected SIPP operators to have incorporated the recommended good practices into the conduct of their business already. So, whilst the regulator's comments suggest some industry participants' understanding of how the good practice standards shaped what was expected of SIPP operators changed over time, it is clear the standards themselves had not changed.

I note that HHJ Dight in the *Adams* case didn't consider the 2012 Thematic Review Report, 2013 guidance and 2014 "Dear CEO" letter to be of relevance to his consideration of Mr Adams' claim. But it does not follow that those publications are irrelevant to my consideration of what is fair and reasonable in the circumstances of this complaint. I am required to take into account good industry practice at the relevant time. And, as mentioned, the publications indicate what I consider amounts to good industry practice at the relevant time.

That doesn't mean that, in considering what is fair and reasonable, I will only consider Dentons' actions with these documents in mind. The reports, Dear CEO letter and guidance gave non-exhaustive examples of good industry practice. They did not say the suggestions given were the limit of what a SIPP operator should do. As the annex to the "Dear CEO" letter notes, what should be done to meet regulatory obligations will depend on the circumstances.

To be clear, I do not say the Principles or the publications obliged Dentons to ensure the transactions were suitable for Mr G. It is accepted Dentons was not required to give advice to Mr G, and could not give advice. And I accept the publications do not alter the meaning of, or the scope of, the Principles. But, as I've said above, they're evidence of what I consider to have been good industry practice at the relevant time, which would bring about the outcomes envisaged by the Principles.

It's important to keep in mind the judge in *Adams v ~~Dentons~~ Options* didn't consider the regulatory publications in the context of considering what's fair and reasonable in all the circumstances bearing in mind various matters including the Principles (as part of the regulator's rules) or good industry practice.

And in determining this complaint, I need to consider whether, in accepting Mr G's application to establish a SIPP and to loan money to G, Dentons complied with its regulatory obligations: to act with due skill, care and diligence; to take reasonable care to organise and control its affairs responsibly and effectively; to pay due regard to the interests of its

customers and treat them fairly; and to act honestly, fairly and professionally. In doing that, I'm looking to the Principles and the publications listed above to provide an indication of what Dentons should have done to comply with its regulatory obligations and duties.

What did Dentons' obligations mean in practice?

In this case, the business Dentons was conducting was its operation of SIPPs. I am satisfied that meeting its regulatory obligations when conducting this business would include deciding whether to accept or reject referrals of business and/or particular investments (in this case, an investment that took the form of a loan). And I note the "*SIPP loans to unconnected parties*" form says "*Each loan will be subject to individual approval by Dentons*" – so, that appears to have been Dentons own understanding at the time of accepting Mr G's business.

Taking account of the factual context of this case, it's my view that in order for Dentons to meet its regulatory obligations, (under the Principles and COBS 2.1.1R), amongst other things it should have undertaken sufficient due diligence into Mr R and the loan to G when deciding to accept Mr G's application.

What I'm considering here is whether Dentons took reasonable care, acted with due diligence and treated Mr G fairly, in accordance with his best interests. And what I think is fair and reasonable in light of that. And I think the key issue in Mr G's complaint is whether it was fair and reasonable for Dentons to have accepted his SIPP application in the first place or (if so) to allow the loan to G. So, I need to consider whether Dentons carried out appropriate due diligence checks on the loan to G when deciding to accept Mr G's application and allowing the loan to be made.

And the questions I need to consider include whether Dentons ought to, acting fairly and reasonably to meet its regulatory obligations and good industry practice, have identified that consumers loaning money to G were being put at significant risk of detriment. And, if so, whether Dentons should therefore not have accepted Mr G's SIPP application or his application to loan money to G.

Summary of my findings

Having taken account of the relevant considerations my findings remain largely as set out in my provisional decision. To confirm, in summary, they are as follows:

- Dentons only carried out basic due diligence – checking G was actively trading and that the loan met HMRC requirements (on the basis Mr G was not connected to G).

- In my view, in the circumstances, such a level of due diligence was not sufficient to meet Dentons' regulatory obligations and standards of good practice at the time.

- There was an obvious risk of consumer detriment here, which Dentons ought reasonably – with its regulatory obligations in mind – to have identified.

- It was not consistent with Dentons' regulatory obligations or standards of good practice to allow the loan in such circumstances. It is fair and reasonable to say the risks of consumer detriment Dentons ought to have identified should have led Dentons, mindful of its regulatory obligations and standards of good practice, to have concluded it should not accept the SIPP/loan application. Or that, alternatively, it should make enquiries/take steps in an attempt to address these risks before doing so.

- Had Dentons made enquiries/taken steps to address the risks it ought to have

identified I think it unlikely these further enquiries/steps would have led Dentons to reasonably conclude it should accept the business, in the circumstances.

- Dentons also does not appear to have followed its own policies here, according to the "*SIPP loans to unconnected parties*" form, which suggests it should have required Mr G to take independent advice on the loan, and to have a guarantor in place, if there was no security. That form was also left blank at critical sections, raising further questions about the basis on which Dentons allowed the loan.

- So, it is fair and reasonable to say Dentons should have concluded it would not be consistent with its regulatory obligations to allow the loan. There are a number of bases on which it should have arrived at that conclusion.

- In my view, it is fair in all the circumstances to ask Dentons to compensate Mr G for his loss. In reaching this view I have taken account of the involvement of other parties and whether it would be fair to say Mr G should bear responsibility for his own actions.

- Dentons has also caused Mr G some distress and inconvenience; it would be fair to award some compensation for this too.

I will now set out my findings in more detail.

The steps taken by Dentons

When asked about its due diligence Dentons provided "*accounts from 2012 through to 2015*" for G. But none of what it has provided was available to it at the time of the loan. The 2012 accounts were not published until November 2013 and the others relate to a period which post-dates the loan. So, these are not relevant considerations here.

The only documents Dentons has provided which were available at the time (and therefore are relevant considerations) are:

- The Annual Return filed on Companies House, dated 11 September 2012.

- An online third party report obtained on 17 April 2013, which gives a high level summary of known facts about G at that time (drawn, it seems, from some of the information available on Companies House).

Dentons has also provided a copy of its new business proforma, which appears to be a record of the basis on which the business was accepted, a copy of the loan application form, and a copy of the loan agreement.

There is no record of anything else being considered by Dentons prior to allowing the loan, or any further commentary; Dentons has confirmed there is no correspondence relating to its due diligence on the loan or the introduction of Mr G's business generally.

This, in my view, demonstrates that Dentons knew very little about the arrangements it was allowing the parties to enter into using its SIPP. In summary, the basis of Dentons' acceptance of the business at the time appears to have been:

- Mr G had not been given any advice, but had been introduced by an accountant.

- Mr G was not connected to G.

- G was actively trading.

In my view, in the circumstances, this was not sufficient to meet Dentons' regulatory obligations and standards of good practice at the time.

What should Dentons have done?

I am satisfied it is fair and reasonable to find Dentons should have carried out due diligence in this instance which was consistent with its regulatory obligations and standards of good practice at the time. And, as set out above, the FCA publications set out how a SIPP operator might meet its regulatory obligations when carrying out due diligence.

I think Dentons should have identified Mr G's application to open the SIPP to make a loan to G as one which carried with it an obvious risk of consumer detriment. Mr G was lending his entire pension to a small company which did not, on the face of it, have capacity for such borrowing. He was apparently doing so without taking any advice (or alternatively having taken advice from a party which may have been connected to G and was not FCA authorised), and without there being anything to demonstrate the risks had been explained to him. And in circumstances where little or nothing was known about what the company he was lending to was going to do with the money, or how the promised security for the loan was going to be provided.

I've set out below some further detail of the risks Dentons ought to have identified.

The risks of consumer detriment

The online ~~third party~~third party report, which appears to have been drawn from what was available on Companies House at the time, says:

"[G] *have total assets of £0 plus total liabilities of £236,095. They owe £16,185 to creditors and are due £1,750 from trade debtors. Their book value is £29,419, and the value of their shareholders' fund is £29,419*"

Companies House also shows a bank had entered a legal charge against the company on 12 December 2006, which remained in place at the time of the loan.

This ought, reasonably, to have led Dentons to question G's capacity to repay money borrowed from Mr G's SIPP, and the security of Mr G's money, once it had been paid to G.

Dentons ought also to have identified the lack of detail about what was going to be done with the money as a further risk. As mentioned above, the "*SIPP loans to unconnected parties*" form asks "*What are the funds required for? Please provide full details*". And that was answered with two words - "*property purchase*". So, the request for "*full details*" had gone unanswered. And a number of questions are raised by the answer given, for example, what property is going to be purchased?; is the loan from Mr G's SIPP to fund it entirely, or is there other borrowing?; if there is other borrowing where does the loan from Mr G's SIPP rank and how will security be provided?

Alternatively, if Dentons understanding was that the money being lent was to fund a property development, as it now suggests (and it is not clear on what basis it has now reached such an understanding), that raises similar questions. And it raises further questions about the conflict between Dentons understanding and what was briefly described in the form.

A further obvious risk is that the section of the "*SIPP loans to unconnected parties*" form dealing with security and guarantor had been left entirely blank. I will return to this later in my

findings. But, for now, I mention it to highlight another clear risk of consumer detriment which ought to have been identified by Dentons.

I have not seen any evidence Mr G was given any explanation of the risks involved with the loan to G. The "*SIPP loans to unconnected parties*" form asked Mr G to confirm "*I understand the risks of lending from my SIPP, particularly if I have selected to lend on an unsecured basis*", but there is nothing to show the risks Mr G had declared he understood had been explained to him. Dentons did not explain the risks, and there is no evidence Mr R had given any explanation either. This ought reasonably to have been identified by Dentons as a clear risk of consumer detriment, as there was no basis on which Dentons could reasonably have assumed Mr G was able to make a full assessment of risks for himself (or had sufficient information available to him to enable him to do so, in any event).

In its response to my provisional decision, Dentons refers to its Terms and Conditions of Business. However, as Dentons notes, that dealt only with the risk of using a SIPP, i.e. the question of whether that was the appropriate vehicle for Mr G's pension. It is not therefore evidence Mr G was given any explanation of the risks involved with the loan to G.

Dentons says there was no introducer of the business, and therefore no due diligence was required on an introducer. That is not, however, consistent with the contemporaneous evidence. Although no financial advisor is recorded on the SIPP application form, the "*Dentons investment approved cover Sheet*", which forms part of the new business proforma dated 17 April 2013, says "*business introduced by* [Mr R]" and makes two further references to the business being introduced by Mr R's accountancy business. It is also clear there was direct interaction between Mr R and Dentons.

So, Mr R (or his accountancy business) was the introducer of Mr G's business; and that introducer was not, Dentons understood, giving advice, and was not FCA authorised, in any event. There was also no evidence of an FCA authorised party being involved or advice being provided to Mr G otherwise. And Dentons should have reasonably been aware of a connection between Mr R and G and therefore a potential conflict of interests. G's address was Mr R's address and Mr R later became a director of G and, as Dentons notes in its submissions to us, Mr R has been the sole point of contact in relation to all matters relating to G and the loan to it. All of this, in my view, should have reasonably led Dentons to conclude it represented a further clear risk of consumer detriment.

So, I remain of the view that, had Dentons been mindful of its regulatory obligations to treat customers fairly, act in their best interests, with reasonable care, and to conduct its business with due skill, care and diligence, and acted fairly and reasonably to meet those obligations, it ought to have identified these risks. And it should either have concluded it should simply not accept the business, given these risks, or should have taken action – made enquiries and taken steps – in an attempt to address the identified risks.

Enquiries/steps Dentons should have undertaken

Had Dentons made reasonable enquiries/taken reasonable steps this, in my view, should also have led it to reach the conclusion it should not accept the business, as doing so would not be consistent with its regulatory obligations and standards of good practice at the time. Reasonable enquiries/steps, in my view, would have revealed further reason to conclude there was a risk of consumer detriment. I've set out below some further details of what, in my view, Dentons should reasonably have done.

The *"total assets of £0*" referred to in the ~~third party~~third party report is likely an error. The 31 December 2011 accounts (which were the latest available at the time of the loan) say G had £249,349 net total assets and £219,910 creditor amounts, which is consistent with a

book value of £29,419. But this position still calls into question G's capacity to borrow £70,000. There was also, as mentioned, a legal charge against G, which further calls into question G's capacity to borrow £70,000.

This, in my view, should have prompted enquiries from Dentons about the current status of G, and its assets – and the plans G had for the money being lent (which should have included further details about how the promised security was to be provided).

Mr G says he was told he was investing in two companies, which is consistent with his being sent two share certificates (although Companies House records suggest he was not actually issued with the shares in either instance). That is quite different to what was said in the "*SIPP loans to unconnected parties*" form. It is also not clear, even now, what actually happened to Mr G's money; and I note the security (which appears to have related to a property purchase or development about which nothing was known) that was apparently to be provided within 12 months of the loan being made was never, in fact, provided. So, it seems unlikely enquiries at the time about G's plans and the security would have yielded satisfactory responses – it seems more likely they would have given a further basis to conclude there was a significant risk of consumer detriment here.

Dentons should also have taken steps to ascertain whether the risks associated with the loan had been explained to Mr G. And I think it likely it would have discovered they had not, as there is no evidence available now to show they were, and Mr G says he was not told the arrangement he was entering into was a risky one.

In its response to my provisional decision, Dentons has referred to a covering letter it sent to Mr G with the loan agreement. That letter included the following:

"*As discussed, the loan will initially be unsecured but we understand that security will be provided in due course and the document states that this will be completed within one year*"

I do not agree this is evidence the risks associated with the loan were discussed with Mr G. It simply relays, as a matter of fact, that security was not going to be provided initially. As mentioned, I have not seen any evidence to show Dentons obtained any understanding of how that security was to be provided. And Dentons appears to have had little understanding of the arrangements otherwise, to an extent it has since given conflicting accounts of what it understood. I do not therefore agree it is likely that the risks were discussed between Mr G and Dentons to an appropriate extent, as Dentons simply did not have sufficient information to be able to understand those risks itself.

In its response to my provisional decision, Dentons says it was not obliged to require Mr G to take independent advice, as it was not a regulatory requirement for any SIPP operator to require a client to seek advice from a regulated financial adviser regarding their personal choice of investments.

I agree that Dentons was not necessarily obliged to require Mr G to take advice, insofar as there was no rule which specified that in prescribed terms. But there were rules requiring Dentons to treat Mr G fairly and act in his ~~in~~ best interests and it is, in my view, fair and reasonable to say those rules mean it might be good practice consistent with those regulatory obligations to require independent advice to be taken in certain circumstances. And it is, in my view, fair and reasonable to find that in the circumstances of this case Dentons ought to have considered that independent advice was important ~~here~~, as a means of ensuring Mr G had an understanding of the risks involved, and the absence of such advice carried a risk of consumer detriment. Dentons itself appears to have recognised at the time that it was good practice to require advice to be taken in some circumstances. As noted below, its own loan application form said, "*For secured loans above 50% of the value*

of your net SIPP assets, we will require you to take independent financial advice". My findings on this point are therefore consistent with Dentons' own policies at the time.

I acknowledge Mr G declared, in the SIPP application form, "*I understand that I should seek professional advice in connection with all, or any, investments to be held within my SIPP*". However, this was not, in my view, sufficient to address the risks of consumer detriment here.

In my provisional decision I mentioned that Dentons could have given Mr G risk warnings itself, or required Mr G to take independent advice. However, my finding ultimately was the Dentons simply should not have allowed the loan. I therefore should make it clear here that these examples of good practice I mentioned in my provisional findings were not bases on which I thought the business could have proceeded. My finding now, as it was ultimately in my provisional decision, is that the lack of an explanation of risks and independent advice were reasons why Dentons should not allow the loan; not points that could be addressed to make it reasonable for Dentons to allow the loan to proceed, as there were a number of other risks of consumer detriment, as I have set out in my findings.

Turning to the role of Mr R, Dentons appears to have understood at the time that Mr R was not giving advice to Mr G. Although it now argues it would, in any event, have been reasonable to rely on advice given by Mr R, and could have reasonably taken assurance generally from his involvement, given his professional status. It has repeated this point in its response to my provisional decision.

I think Dentons' reference to the guidance in the "reliance on others" COBS rules (COBS 2.4) in its response to the investigator's view is misplaced. Firstly, there is no evidence it placed any reliance on Mr R having provided information in writing on which it relied (and it has, in any event, argued Mr R was not in fact the introducer of the business at all). Secondly, Dentons' reference to the guidance at COBS 2.4.8G is made in the context of Mr G having said he received advice from Mr R; but the guidance (and the rules otherwise) relate to *information*, not advice.

I also remain of the view there is not any other basis on which Dentons could reasonably have taken assurance from Mr R's involvement; rather, it should have been a point of concern, as I have set out above.

Dentons should have questioned how Mr G had come to the decision to make the loan if (as it appears to have understood at the time) no advice had been given. It should also reasonably have known, or suspected, Mr R was connected to G. Which ought reasonably to have led it to question his role in the transaction, as he may have had an interest in securing the loan for G. I do not therefore think enquiries about Mr R's role in the arrangement should have led Dentons to think there was no risk of consumer detriment arising from how the introduction to it had come about; ~~instead~~instead, it would have given a further basis to conclude there was a significant risk of consumer detriment here.

Overall, had Dentons decided it should make reasonable enquiries/take reasonable steps, I think it's unlikely these further enquiries/steps would have led Dentons to reasonably conclude it should accept the business. They should instead have led Dentons to conclude, with its regulatory obligations in mind, that there was further reason not to allow the loan.

Dentons not following its own policies, gaps in the loan form

The final finding to set out relates to an apparent inconsistency between Dentons acceptance of the loan to G and, from the "*SIPP loans to unconnected parties*" form, what appears to be its own policy on such loans. And the gaps at critical sections of that form,

relating to security and guarantors.

The loan appears to have been accepted on a basis which, from the content of the "*SIPP loans to unconnected parties*" form, appears to be inconsistent with Dentons' own policies on the acceptance of such business. As set out above, the form says, "*For secured loans above 50% of the value of your net SIPP assets, we will require you to take independent financial advice*", and the section on security and a guarantor says if the former is not available the latter must be provided.

I note the requirement for advice refers specifically to secured loans but it seems reasonable to assume it would extend to unsecured loans too, given the additional risk associated with such loans. So, it seems Dentons own policies required Mr G to take independent advice and for either security or a guarantor to be provided. However, Dentons does not appear to have taken any steps to implement those policies here. They were prudent steps, consistent with Dentons' regulatory obligations, and would have gone some way towards addressing the risks of consumer detriment I have set out; it is not therefore clear why they were not followed in this instance.

Dentons should also not have accepted a form which was incomplete at critical sections, in any event. That, in my view, was not consistent with its regulatory obligations.

So, Dentons should have required security or a guarantor. And, in the circumstances, it seems unlikely security or a guarantor would have been forthcoming; these steps would therefore likely have meant the loan did not proceed.

This is a further basis on which, in my view, Dentons should not have allowed the loan to proceed. To be clear, I make this point for completeness only – my finding is that Dentons should not have allowed the loan, in any event, for the reasons I have set out.

Is it fair to require Dentons to compensate Mr G?

Would the SIPP application and loan have proceeded, had Dentons not allowed the loan?

When considering this from the perspective of fair compensation, I do not have to be satisfied that there is no possibility that things would not have progressed as they did if Dentons had done what I think it ought to have. I must only be satisfied that, on balance, it's more likely than not Mr G would have made an alternative investment (or retained his existing arrangements).

I remain of the view it is more likely than not Mr G would *not* have proceeded with the loan (and therefore the SIPP application), had Dentons acted differently. The SIPP application and loan were inextricably linked; the only reason Mr G applied for the SIPP was to make the loan, and Mr G asked to make the loan the same day as he applied for the SIPP.

Had Dentons refused to allow the loan I do not think it inevitable that Mr G would have gone to another SIPP operator. And I do not, in any event, believe it would be reasonable to assume that another SIPP operator would have proceeded with the transaction, had Dentons not proceeded with it. I do not think it's fair and reasonable to say that Dentons should not compensate Mr G for his loss based on speculation that another SIPP operator would have made the same mistakes as I have found Dentons did. I think it's fair instead to assume that another SIPP provider would've complied with its regulatory obligations and good industry practice, and therefore would not have allowed the transaction to go ahead.

I do not think it is necessary to further explore Mr G's relationship with Mr R in order to

decide whether it is fair to ask Dentons to compensate Mr G for his loss. Mr G has explained in his submissions to us that Mr R was his long-standing accountant, and he trusted him. I think this was reasonable, in the circumstances, and do not think Mr G's reasonable trust in Mr R means it would not be fair to ask Dentons to compensate Mr G for a loss I am satisfied he would not have suffered if it had acted in a way which was consistent with its regulatory obligations.

Mr G taking responsibility for his own actions and decisions

I have considered section 5(2)(d) of the FSMA (now section 1C). This section requires the FCA, in securing an appropriate degree of protection for consumers, to have regard to, amongst other things, the general principle that consumers should take responsibility for their own investment decisions.

Having considered this point carefully ~~and~~ I am satisfied that it would not be fair or reasonable to say Mr G's actions mean he should bear the loss arising as a result of Dentons' failings.

In my view, if Dentons had acted in accordance with its regulatory obligations and good industry practice it should not have accepted Mr G's business. For the reasons I have set out, I am satisfied that would have been the end of the matter – if that had happened, I am satisfied the arrangement for Mr G wouldn't have come about in the first place, and the loss he has suffered could have been avoided.

As I've made clear, Dentons needed to carry out appropriate due diligence and reach reasonable conclusions which were consistent with its regulatory obligations. And I think it failed to do this.

I acknowledge that Mr G declared that he understood he should take professional advice, and that he did not receive advice in this instance. But it was not consistent with Dentons regulatory obligations to rely solely on these general declarations and I do not think the declarations mean it would be fair to say Dentons should not have to compensate Mr G for a loss I am satisfied he would not have suffered, but for the mistakes it made.

I also acknowledge what Dentons says about the time (eight days) between Mr G signing the SIPP application form and its Terms and Conditions. But I do not think it would be fair to say that means Dentons should not have to compensate Mr G, or should have to only compensate him for part of his loss.

There are a number of possible reasons for what is a relatively small delay between these documents being signed. I accept that one of those is that Mr G might have been taking time to reflect on his decision. But the Terms and Conditions were generic – they did not deal with the loan specifically – and, as I have set out, there was no reasonable basis on which it could have been reasonably assumed Mr G was privy to sufficient information to allow him to understand the risks associated with the loan. So, given all I have said about what Dentons ought to have concluded about this business, I do not think the possibility of Mr G having taken time to reflect on whether he should accept Dentons' Terms and Conditions means it would be fair for him to take any responsibility for the loss he has suffered.

Dentons has also said that Mr G's "complete reliance" on Mr R means it would not be fair for it to be held responsible for the loss arising from the loan. As mentioned above, I think Mr G's trust in Mr R was reasonable. And, as I have set out in my findings, I think Dentons should reasonably have identified Mr R's involvement – and the absence of any independent advice – to be a risk of consumer detriment; and this is one of the reasons why it should not

have allowed the loan. It would not be fair, in such circumstances, to say Mr G should not be compensated for his loss by Dentons because he had trust in Mr R.

Overall, I do not think it would be fair to say in the circumstances that Mr G should suffer the loss, or part of it, because he ultimately instructed the transactions to be executed.

The involvement of other parties

Whilst I accept that Mr R may be responsible for initiating the course of action that has led to Mr G's loss, I consider that Dentons failed unreasonably to put a stop to that course of action when it had the opportunity and obligation to do so. I'm satisfied that if Dentons had complied with its own distinct regulatory obligations as a SIPP operator, the investment wouldn't have come about in the first place, and the loss Mr G has suffered could have been avoided.

The DISP rules set out that when an Ombudsman's determination includes a money award, then that money award may be such amount as the Ombudsman considers to be fair compensation for financial loss, whether or not a Court would award compensation (DISP 3.7.2R).

In my opinion it's fair and reasonable in the circumstances of this case to hold Dentons accountable for its *own* failure to comply with its regulatory obligations and~~,~~ good industry practice, and to treat Mr G fairly.

The starting point, therefore, is that it would be fair to require Dentons to pay Mr G compensation for the loss he's suffered as a result of its failings. And, for the reasons I have set out, it is my view that it is appropriate and fair in the circumstances for Dentons to compensate Mr G to the full extent of the financial losses he has suffered due to its failings. Having carefully considered everything, I do not think that it would be appropriate or fair in the circumstances to reduce the compensation amount that Dentons is liable to pay to Mr G.

So~~p~~, in considering what fair compensation looks like in this case, it is reasonable to make an award against Dentons that requires it to compensate Mr G for the full measure of his loss.

Putting things right

Fair compensation

My aim is that Mr G should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I think Mr G would have remained with his previous provider, however I cannot be certain that a value will be obtainable for what the previous policy would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mr G's circumstances and objectives when he invested.

What must Dentons do?

To compensate Mr G fairly, Dentons must:

Compare the performance of Mr G's investment with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

Dentons should also add any interest set out below to the compensation payable.

If there is a loss, Dentons should pay into Mr G's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If Dentons is unable to pay the compensation into Mr G's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr G won't be able to reclaim any of the reduction after compensation is paid.

The *notional* allowance should be calculated using Mr G's actual or expected marginal rate of tax at his selected retirement age.

It's reasonable to assume that Mr G is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr G would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

If either Dentons or Mr G dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified and Mr G receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.

Dentons should also pay Mr G £500 for the distress and inconvenience caused by the arrangements, which have clearly caused him significant worry.

Income tax may be payable on any interest paid. If Dentons deducts income tax from the interest, it should tell Mr G how much has been taken off. Dentons should give Mr G a tax deduction certificate in respect of interest if Mr G asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Dentons SIPP	Still exists but illiquid	Notional value from previous provider	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

It may be difficult to find the *actual* value of the portfolio. This is complicated where an asset is illiquid (meaning it could not be readily sold on the open market) as in this case.

Dentons should explore taking over the loan, in exchange for paying Mr G compensation as I have set out. The loan should be assumed to have no value for the purpose of calculation.

If Dentons cannot take over the loan it may require, subject to what I say below about compensation above the money award limit, that Mr G provides an undertaking to pay it any amount that may be repaid to his SIPP by G, or individuals associated with G, in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan.

Dentons will need to meet any costs in drawing up the undertaking.

Notional Value

This is the value of Mr G's investment had it remained with the previous provider until the end date. Dentons should request that the previous provider calculate this value.

If the previous provider is unable to calculate a notional value, Dentons will need to determine a fair value for Mr G's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

The Dentons SIPP only exists because of the loan. In order for the Dentons SIPP to be closed and further fees that are charged to be prevented, alternative arrangements would need to be made. I invite Dentons to consider what arrangements can be made; in particular, it should, as I have set out above, explore whether the loan can be assigned to it in return for compensation paid to Mr G.

If Dentons is unable to take over the loan, to provide certainty to all parties I think it's fair that it pays Mr G an upfront lump sum equivalent to five years' worth of fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the Dentons SIPP to be closed. Alternatively, Dentons should confirm it will charge no further fees (I have noted it is not currently charging fees).

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr G wanted to achieve a reasonable return with some to his capital.

- If the previous provider is unable to calculate a notional value, then I consider the FTSE UK Private Investors Income Total Return Index would be a fair measure given Mr G's circumstances and objectives. It is the sort of investment return a consumer could have obtained with some risk to their capital.

My final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend that Dentons Pension Management Limited pays the balance.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Dentons Pension Management Limited should pay the amount produced by that calculation up to the maximum of £160,000 (including distress or inconvenience but excluding costs) plus any interest on that amount as set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that Dentons Pension Management Limited pays Mr G the balance plus any interest on the balance as set out above.

If Dentons Pension Management Limited does not pay the recommended amount, it may not take over the loan (if it is able to) or ask for an undertaking from Mr G until such a time as any amounts repaid by G, or individuals associated with G, together with the compensation paid by Dentons Pension Management Limited (excluding any interest) equates to the full fair compensation as set out above. Dentons Pension Management Limited may take over the loan or request an undertaking from Mr G at that point.

Mr G should be aware that any amount repaid to him would be paid into his pension plan so he may have to realise other assets in order to meet the undertaking.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 17 February 2025.

John Pattinson
Ombudsman